

MAMIE RUPNICKI, ANADARKO AREA VICE PRESIDENT
NATIONAL CONGRESS OF AMERICAN INDIANS

TESTIMONY ON TRIBAL PRIORITY ALLOCATIONS AND S.612, THE INDIAN NEEDS
ASSESSMENT AND PROGRAM EVALUATION ACT

BEFORE THE SENATE COMMITTEE ON INDIAN AFFAIRS

April 5, 2000

Introduction

Good morning, Chairman Campbell and Vice Chairman Inouye. My name is Mamie Rupnicki; I am the Anadarko Area Vice President for the National Congress of American Indians (NCAI) and the Chairwoman of the Prairie Band Potawatomi Indian Nation. As an active participant in the Tribal Leaders/ BIA Tribal Priority Allocations (TPA) Workgroup, I am honored to be here to testify on behalf of NCAI and the Prairie Band. Before I begin discussion of the findings of the TPA Workgroup and my support for and comments on S.612, I would like to briefly set forth the appropriate backdrop of the federal government's historical, legal, and moral obligations with respect to Indian tribes on these issues.

Backdrop of Tribal Priority Appropriations and S.612

In 1970, President Nixon presented the Indian Self-Determination and Education Assistance Act (ISDEAA), 25 U.S.C. 450 *et al*, with these words:

"The special relationship between Indians and the federal government is the result . . of solemn obligations which have been entered into by the United States Government. Down through the years, through written treaties and through informal agreements, our government has made specific commitments to the Indian people. For their part, the Indians have often surrendered claims to vast tracts of land In exchange, the government has agreed to provide community services such as health, education and public safety, services which would presumably allow Indian communities to enjoy a standard of living comparable to that of other Americans. This goal, of course, has never been achieved. But the special relationship between the Indian tribes and the federal government which arises from these agreements continues to carry immense moral and legal force."

(See, President Richard Nixon, Special Message to the Congress on Indian Affairs, July 8, 1970.)

This message came to the Congress nearly 30 years ago and it still rings true. While the ISDEAA has proven beneficial for tribes, much work still needs to be done by the federal government to ensure it is upholding its commitments and trust responsibility to Indian tribes.

The federal trust responsibility arises from the commitments the United States made to the tribes in treaties, statutes, executive orders, judicial decisions and the general course of dealing with tribes by the United States. There is a legal, ethical, moral and historical responsibility of the federal government to provide for and support Indian tribes. It is important to understand that the United States' promises to provide for the tribes were usually made in exchange for vast tracts of our land. The Snyder Act, 25 U.S.C. § 13, is one statute which clearly sets forth the obligation of the Bureau of Indian Affairs (BIA) to direct, supervise and expend monies appropriated by Congress for the benefit, care and assistance of the Indians. The Act states that such monies should be used for Indians throughout the United States for their general support; the conservation of health; industrial assistance; development of water supplies; repair of buildings and grounds for existing plants and projects; the employment of supervisors, physicians, police, judges and others; and for the general and incidental expenses in connection with the administration of Indian affairs. (25 U.S.C. §13) Yet, while the Snyder Act was passed in 1921, the treaties ratified well before that, and the ISDEAA enacted in 1975, we find that the federal government's effort to uphold its trust responsibility to tribes is lacking. The federal trust responsibility of the United States to tribes cannot be forgotten during appropriations times, times of economic hardship, or ever. The problem, however, is that the government does not have the adequate means to assess what is needed in Indian Country.

It is for this reason that I express the support of NCAI and the Prairie Band for S.612. How can the federal government adhere to its commitments if it does not know the true need of the tribes and does not review its programs to make sure they are effective? S.612 would provide a mechanism to adequately assess the areas in which tribes are lacking and whether agency programs and services are meeting the need. Before discussing the details of this legislation, however, it is important to discuss the findings and recommendations of the Tribal Leader/BIA TPA Workgroup.

Tribal Priority Allocations Workgroup

As you well know, Section 129 of the FY1999 Omnibus Appropriations Act directed the BIA to develop alternative methods to fund TPA programs in future years. The Tribal Leader/BIA TPA Workgroup was developed in June 1998 to (1) gather data on tribal unmet needs; and (2) develop alternative methods of distributing TPA new monies based upon these identified needs and the disparities among tribes and inequities between tribal governments and non-tribal governments' receipt and expenditure of federal funds. I was an active member of the TPA Workgroup and participated in the monthly meetings along with almost 40 other Tribal Leaders, technical representatives, and BIA staff persons. The TPA Workgroup met eight times during a 10-month period. Sub-group meetings were held during this same time.

TPA funds are monies appropriated by Congress to fund the eight BIA activities serving Indian people. The eight BIA activities are support for tribal government, human services, education,

public safety, community development, resources management, trust services, and administration. There are multiple programs within each of these categories. TPA base funds are used to fund these activities and programs and to finance operational costs associated with ongoing tribal government administration, courts, education, law enforcement, social services and management. They are the primary source of tribal governmental services to Indian communities and make up nearly half of the BIA's operating budget. Significantly, the TPA Workgroup found that TPA allocations represent vital core financing and are the only dependable federal resources available to tribes to provide basic governmental services to their members. The federal government's obligation to provide TPA monies arises from the aforementioned trust responsibility.

Tribal Unmet Need

The TPA Workgroup conducted an extensive study of tribal unmet need and found that despite the federal government's trust responsibility, funding has consistently been insufficient to address tribes' basic needs. While this was the finding of both the Tribal Leader representatives and the BIA representatives, the Tribal Leaders of the Workgroup decided to submit their own TPA report separate and distinct from the BIA to make sure that Congress received a comprehensive characterization of the tribes' concerns. We wanted to make sure that the research, findings and recommendations were not scrubbed by the Office of Management and Budget before being made available to Congress. The Tribes' report was authored, reviewed, and approved (through various tribal regional meetings) by Tribal Leaders, the people who deal, on a day-to-day basis, with the effects of TPA allocations. Some of the underlying documentation, findings, and recommendations are the same for both reports.

The Tribal Leader Report illustrates in explicit detail that federal funding to tribes is far below that provided to other governmental entities that provide similar government services. Indeed, TPA funding would have to more than triple simply to bring tribal funding to the funding level of the corresponding national standard. Data collected by the TPA Workgroup clearly demonstrates that tribal governments receive less and spend less than other governmental entities. Federal appropriations levels have forced tribes to struggle just to keep pace with America's population in its lowest standards. Moreover, funding for TPA between 1990 and 1999 has even failed to keep pace with inflation. In fact, the value of TPA funding in 1999 (in 1990 dollars) is less than the comparable 1990 TPA base funding. Indian persons, by far, continue to rate in the worst categories of all economic indicators. Most tribes suffer from the most severe poverty, unemployment, poor health, and inferior housing conditions in all of the United States, even though the federal government has a moral and legal obligation to provide for them. In the wake of the Tribal Leaders' recommendations, S.612 comes at an opportune time.

Support for and Comments on S.612

S.612 finds that the federal agencies that provide services for the benefit of Indians have not been able to furnish Congress with ample information to assess the magnitude of tribal unmet need, and that the lack of such information prohibits Congress from adequately responding to such need. The purpose of S.612 is to provide Congress substantiated information so it can better meet the needs of Indian Country. The first part of the bill, Section 3(a), would require the Secretary of

the Interior in consultation with the tribes and with the federal agencies that provide programs for tribes to develop a uniform method for determining, analyzing, and compiling the program and service assistance needs for tribes and Indians.

NCAI agrees with the bill's findings and supports its purpose. S.612 directly coincides with the TPA Workgroup findings. The TPA Workgroup recognized the need for program measures baseline data to be submitted for budget formulation, fund distribution and to justify increased funding to address tribal unmet needs. The report recommends that the BIA develop a comprehensive database system to maintain, on an on-going basis, current statistical information about tribally-specific unmet needs.

In fact, the TPA Workgroup developed a format to identify and gather tribal specific unmet program and service needs information. The TPA Workgroup tried to quantify levels of need for the programs, functions and activities that are supported with TPA funds and to determine what portion of tribes' need is not being met. The TPA Workgroup's format identified functions and activities that other governments (state and local) provide that most closely approximate the functions and activities tribal governments perform with TPA funding. Once the TPA Workgroup identified a similar unit of measure, the standard and related costs for performing that activity were established. Using the total TPA funding amount for each service, the average unit cost that tribes receive was compared to the amount expended by other governments. The TPA Workgroup obtained (voluntarily supplied) tribal specific data on how much TPA funds were spent to provide the services and how much the Tribe had to supplement that service.

While the TPA Workgroup found that tribes receive less for and spend less on comparable programs than other governments do, it recommends that a comprehensive study on tribal need on a tribe-by-tribe basis should be conducted to get a more accurate read on unmet need. The TPA Workgroup's format, then, provides a framework for more extensive needs assessment. Nevertheless, we believe that Congress and the federal agencies should be mindful of this format in the implementation of S.612.

Significantly, in recognition of the need for consistent, adequate data collection on tribal needs, the NCAI and the BIA have formed a Data Management Needs Assessment and Auditing Workgroup. The objectives of the Workgroup directly coincide with the purposes of S.612. NCAI recognizes that while tribes have been faithful in submitting their audits and reports for the use of BIA funds, the BIA does not have a consistent format for reporting. A consistent format is necessary to identify unmet need.

To this end, the Workgroup plans to identify reporting options for tribes to submit needs information to the BIA; identify the costs of the data collections system; develop a reporting instrument consistent for all tribes; identify how data might be used for distribution methodologies; and develop a meaningful tribal budget process. This Workgroup can use the TPA Report work as a base. The Workgroup has met twice already and plans to meet next week. We will keep you informed of its progress and urge you to be mindful of the group's work in your consideration of this legislation.

After thorough review, tribes have raised some concerns with S.612. First, it lacks provisions which would ensure proper use of the tribes' unmet needs information and protect against any misuse of it. Second, in order for the tribal needs assessment and federal agency tribal program evaluation methods to be used and accepted in Indian Country, there must be meaningful consultation and involvement of tribes in their development. As mentioned, the Tribal Leader TPA Report will be useful in developing program evaluations. Third, the bill should include provisions on how the information in the Indian Needs Assessments (INAs) will set priorities in the budget formulation process.

Fourth, the development of the INAs and Annual Indian Program Evaluations (AIPEs) may pose a burden for the agencies. We want to make sure that the efforts towards assessing tribes' needs do not draw on the resources that should be going to the tribes. Finally, Section 3(a)(1)(B)-(C) focuses on the location of the tribe's service area in developing the INAs. There is a concern that this factor may not be a good indicator for determining tribal unmet needs. Many tribes provide for their members whether or not they reside in the service area. For example, the Prairie Band provides for its members regardless of where they live. We have several members living in downtown Topeka, thirty miles from our reservation's borders. We do not cut them off from our services. Rather, we provide for them even though their needs are not taken into account by the BIA or Indian Health Service (IHS) because they are not within the service area.

Additionally, Section 3(b) of S.612 would require the federal agencies to conduct AIPEs each year. The AIPEs would set forth the agency's annual expenditure for programs and services for which Indians are eligible, the services and programs specifically for the benefit of Indians, and its method of delivery of such services and funding. Section 3 (c) would require each agency to publish a list of the programs and services it offers tribes and individual Indians. Section 4 would require the Secretary to file a strategic plan for coordinating the federal programs and services to tribes and their members. NCAI believes that the AIPEs, annual listings and strategic plan will be helpful for tracking what programs are offered to tribes. Tribes do not always have the resources to do the necessary research for the Federal Register's intermittent notices to find sources of needed funds and assistance. We are concerned, however, that in developing the AIPEs, the agencies may interfere with the operation of tribal governments and the implementation of self-determination contracts and self-governance compacts. As written, the bill could be expected to expand federal monitoring activity beyond the limit of not more than one routine visit per year as exists under self-determination contracting. In addition, the bill could expand federal monitoring activity under self-governance from beyond trust functions to all functions being performed by tribes with federal funding. Provisions which limit the number and use of federal program evaluations should be included in the bill. Tribal program evaluations should be utilized by federal agencies when they are available.

Conclusion

Mr. Chairman, thank you for the opportunity to present this statement on TPA and S.612, the Indian Needs Assessment and Program Evaluation Act. We urge you to take a hard look at the TPA Report and its recommendations. The TPA Workgroup found that the amount of unmet need is staggering. The appropriate means of addressing this need, according to the Tribal

Leaders and the BIA, is not the redistribution of TPA monies - rather, it is an allocation of new monies. Aside from the annual appropriations process, S.612 is a good start for addressing the need. Under it, federal agencies can determine the magnitude of the unmet need and ascertain what is required to address it. At present, without the means to accurately determine the needs in Indian Country, the agencies cannot truly adhere to the federal government's obligation to the tribes. Again, while we support S.612's proposals and purposes, we do have some concerns about its practical implementation. We also urge you to consider the Tribal Leader TPA Report and to use the NCAI/BIA Data Management and Needs Assessment and Auditing Workgroup, when necessary, on this issue.

Thank you for the opportunity to testify. We are optimistic about S.612 and we look forward to working with the Committee. We appreciate your leadership on this very important matter. I would be happy to take any questions you may have.